

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FATHIREE ALI,

Plaintiff,

Case No. 1:19-cv-126

v.

Honorable Janet T. Neff

STEVEN L. SIMMONS et al.,

Defendants.

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (PLRA), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, the Court will dismiss Plaintiff's complaint for failure to state a claim, because it is time-barred.

Discussion

I. Factual allegations

Plaintiff is presently incarcerated with the Michigan Department of Corrections (MDOC) at the Lakeland Correctional Facility (LCF) in Coldwater, Branch County, Michigan.

The events about which he complains occurred at that facility and the Bellamy Creek Correctional Facility (IBC) in Ionia, Ionia County, Michigan. Plaintiff sues the MDOC and the following IBC officials: Correctional Officers Steven L. Simmons, Michael Hall, Kevin Rockwell, Adam Coburn, (unknown) Hickok, and (unknown) Wagner; and Sergeant Gary Stump.

Plaintiff alleges a series of actions by Defendants between June 2 and August 12, 2015. Plaintiff asserts that the individual Defendants harassed him on the basis of his Muslim religion; barred him from praying in the small unit yard; retaliated against him for complaining about their conduct by issuing false misconducts and assaulting him; used excessive force against him; and denied him necessary medical care. Plaintiff contends that Defendants' actions violated the First, Eighth, and Fourteenth Amendments, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-1, and a variety of state laws.

Plaintiff seeks declaratory relief, together with compensatory and punitive damages.

II. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails “to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff's allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although the plausibility standard is not equivalent to a “probability requirement,” . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)); see also *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

State statutes of limitations and tolling principles apply to determine the timeliness of claims asserted under 42 U.S.C. § 1983. *Wilson v. Garcia*, 471 U.S. 261, 268-69 (1985). For civil rights suits filed in Michigan under § 1983, the statute of limitations is three years. See Mich. Comp. Laws § 600.5805(10); *Carroll v. Wilkerson*, 782 F.2d 44, 44 (6th Cir. 1986) (per curiam); *Stafford v. Vaughn*, No. 97-2239, 1999 WL 96990, at *1 (6th Cir. Feb. 2, 1999). Accrual of the claim for relief, however, is a question of federal law. *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996); *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). The statute of limitations begins to run when the aggrieved party knows or has reason to know of the injury that is the basis of his action. *Collyer*, 98 F.3d at 220.¹

¹ 28 U.S.C. § 1658 created a “catch-all” limitations period of four years for civil actions arising under federal statutes enacted after December 1, 1990. The Supreme Court’s decision in *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004), which applied this federal four-year limitations period to a suit alleging racial discrimination under § 1981 does not apply to prisoner claims under 28 U.S.C. § 1983 because, while § 1983 was amended in 1996, prisoner civil rights actions under § 1983 were not “made possible” by the amended statute. *Id.* at 382.

Plaintiff's complaint is untimely. He asserts claims arising between June 2 and August 12, 2015. Plaintiff had reason to know of the "harms" done to him at the time they occurred. Hence, his claims accrued in the summer of 2015. However, he did not file his complaint until January 23, 2019, beyond Michigan's three-year limit.

The statute of limitations is tolled for the period during which a plaintiff's available state remedies were being properly exhausted. *See Brown v. Morgan*, 209 F.3d 595, 596-97 (6th Cir. 2000). The MDOC grievance process requires that, before filing a grievance, a prisoner must attempt to resolve the issue with the offending staff member within two business days. Mich. Dep't of Corr. Policy Directive 03.02.130 ¶ P (eff. July 9, 2007). If the issue is not informally resolved, a prisoner must file a Step-I grievance within five business days. *Id.* ¶ V. A prisoner unsatisfied with the Step-I response, must file a Step-II grievance response within ten days of when the Step-I response is due or received. *Id.* ¶ BB. If dissatisfied with the Step-I response, a prisoner must file an appeal to Step III within 10 days of when the Step-II response is received or due. *Id.* ¶ FF.

Plaintiff does not provide information about the date on which his Step-III grievance was decided. However, under MDOC Policy Directive 03.02.130 ¶ R, the time for completing the grievance process through all steps should not exceed 120 days. The last act about which Plaintiff complains occurred on August 12, 2015. The 120-day period for completing the exhaustion process expired on December 10, 2015, more than 45 days before Plaintiff filed his complaint. Tolling during the period of administrative exhaustion therefore does not appear to render Plaintiff's claim timely.

Moreover, Michigan law no longer tolls the running of the statute of limitations when a plaintiff is incarcerated. *See Mich. Comp. Laws* § 600.5851(9). Further, it is well

established that ignorance of the law does not warrant equitable tolling of a statute of limitations. *See Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991); *Jones v. Gen. Motors Corp.*, 939 F.2d 380, 385 (6th Cir. 1991); *Mason v. Dep't of Justice*, No. 01-5701, 2002 WL 1334756, at *2 (6th Cir. June 17, 2002).

Plaintiff's claim therefore is time-barred. As the Supreme Court has recognized, "[i]f the allegations . . . show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim" *Jones v. Bock*, 549 U.S. 199, 215 (2007).

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court determines that Plaintiff's complaint will be dismissed for failure to state a claim, under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c).

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the \$505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding *in forma pauperis*, e.g., by the "three-strikes" rule of § 1915(g). If he is barred, he will be required to pay the \$505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A judgment consistent with this opinion will be entered.

Dated: March 21, 2019

/s/ Janet T. Neff
Janet T. Neff
United States District Judge